CCRB INVESTIGATIVE RECOMMENDATION

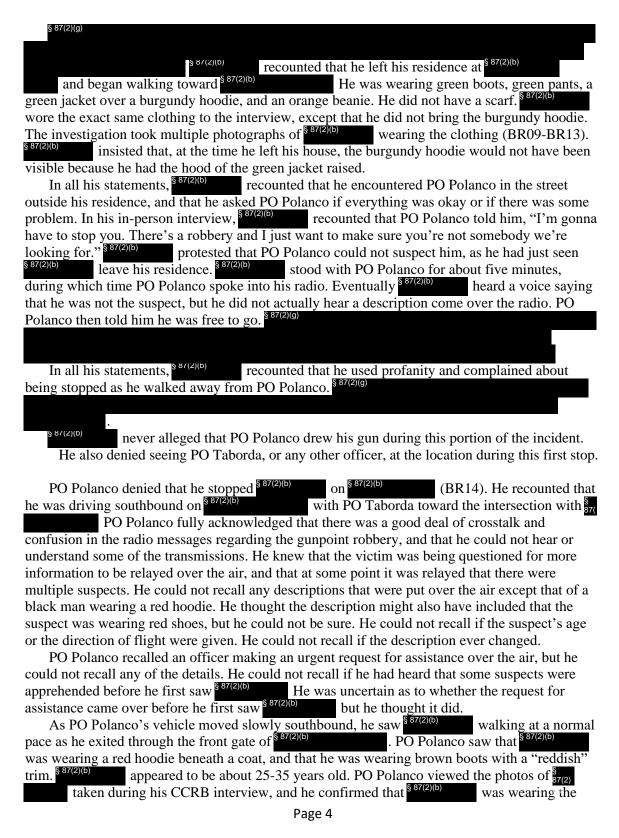
Investigator:		Team:	CCRB Case #:	Force	✓ Discourt.	U.S.
Daniel Giansante		Squad #8	201800074	☐ Abuse	O.L.	☐ Injury
T. 11 . D. ()					1,037, 007	Legger
Incident Date(s)		Location of Incident:		Precinct:	18 Mo. SOL	EO SOL
Sunday, 12/31/2017 2:27 PM		In front of § 87(2)(b) of § 87(2)(b)	in front	47	6/30/2019	6/30/2019
Date/Time CV Reported		CV Reported At:	How CV Reported	: Date/Tim	e Received at CC	RB
Sun, 12/31/2017 3:19 PM	CCRB Call Processing Sun, 12/31/2017 3:19 PM System					
Complainant/Victim	Туре	Home Addr	ress			
Witness(es)		Home Addr	ress			
Subject Officer(s)	Shield	TaxID	Command			
1. POM Johnatan Taborda	20193	963296	047 PCT			
2. POM Jonathan Polanco	26935	948263	047 PCT			
3. An officer			047 PCT			
Witness Officer(s)	Shield N	o Tax No	Cmd Name			
1. POF Gladys Modesto	27516	948251	047 PCT			
2. POM Irvin Saenz	22055	959959	047 PCT			
Officer(s)	Allegatio	on		Inv	estigator Recor	nmendation
A.POM Jonathan Polanco	Abuse: In Officer J	n front of § 87(2)(b) onathan Polanco drew	in the Bronz his gun.	x, Police		
B.POM Jonathan Polanco	Abuse: In Officer J	n front of § ^{87(2)(b)} onathan Polanco stoppe	in the Bronx ed § 87(2)(b)	x, Police		
C.POM Jonathan Polanco	Abuse: In front of § 87(2)(b) in the Bronx, Police Officer Jonathan Polanco drew his gun.					
D.POM Jonathan Polanco	Abuse: In front of \$87(2)(b) in the Bronx, Police Officer Jonathan Polanco stopped \$87(2)(b)					
E.POM Johnatan Taborda	Abuse: In front of \$87(2)(b) in the Bronx, Police Officer Johnatan Taborda stopped \$87(2)(b)					
F.POM Jonathan Polanco	Abuse: In Police O	n front of ^{§ 87(2)(b)} fficer Jonathan Polanco	in the Bro	onx,		
G.POM Jonathan Polanco		esy: In front of § 87(2)(b) colice Officer Jonathan	in the Polanco spoke discort			
H. An officer		esy: In front of § 87(2)(b) n officer spoke discour	teously to § 87(2)(b) in the	he		
I.POM Jonathan Polanco		n front of § 87(2)(b) onathan Polanco drew	in the Bronz	x, Police		

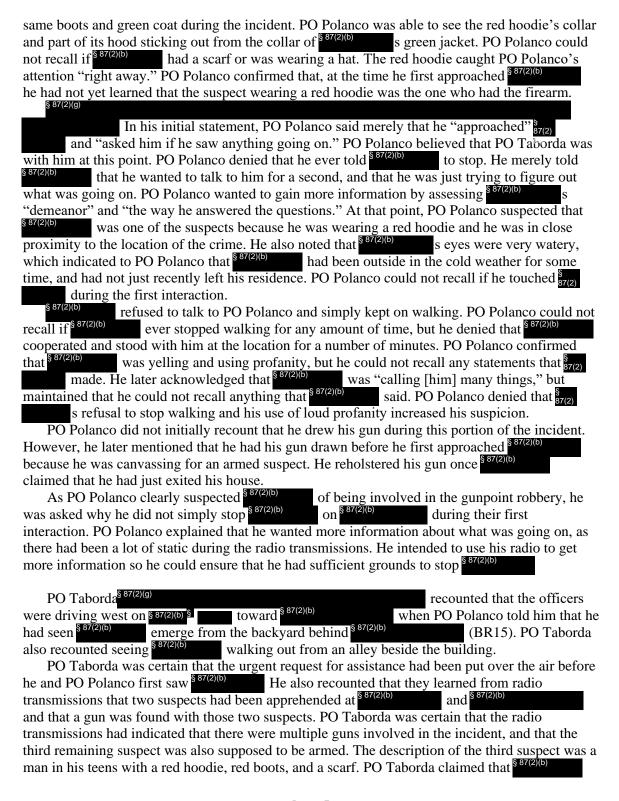
Case Summary
On December 31, 2017, ser/2)(b) filed the following complaint in person at the 47 th
Precinct stationhouse (BR01). The complaint was forwarded to IAB, generating original log
number 2017-51697 (BR02). On January 3, 2018, [887(2)(b)] filed the same complaint with the
CCRB by leaving a voicemail on the DiRAD message system (BR03). On December 31, 2017, at approximately 2:27 p.m., Police Officer Jonathan Polanco and
Police Officer Johnatan Taborda, both of the 47 th Precinct, were canvassing for suspects after a
report of an attempted gunpoint robbery. In front of \$87(2)(b) in the Bronx, PO
Polanco drew his gun as he approached (Allegation A: Abuse of Authority,
PO Polanco allegedly stopped \$87(2)(b) at that location (Allegation B: Abuse of
Authority, \$\frac{87(2)(9)}{2}\$ PO Polanco followed \$\frac{87(2)(b)}{2}\$ to a restaurant at \$\frac{87(2)(b)}{2}\$ and stood
PO Polanco followed outside when \$87(2)(b) and stood outside when
outside (Allegation C: Abuse of Authority: \$87(2)(9) PO Polanco and PO Taborda ordered
to exit the restaurant and stopped him outside (Allegations D & E: Abuse of
Authority, \$87(2)(9) PO Polanco frisked (Allegation F: Abuse of
Authority, \$87(2)(9) PO Polanco allegedly called \$87(2)(b) a "dumbass" (Allegation G: Discourtesy, \$87(2)(9) An unidentified officer allegedly told "You"
G: Discourtesy, Sa(2)(9) An unidentified officer allegedly told can't fuck with us" (Allegation H: Discourtesy, Sa(2)(9) "You
later encountered PO Polanco and PO Taborda again in front of
and PO Polanco allegedly drew his gun again (Allegation I: Abuse of Authority,
§ 87(2)(g)
The investigation obtained cellphone video footage from showing his final
interaction with the officers, but it does not show any portion of the incident in which the alleged
actions took place (BR04).
§ 87(2)(g)
Findings and Recommendations
Allegation (A) Abuse of Authority: In front of \$87(2)(5) in the Bronx, Police Officer Jonathan Polanco drew his gun.
Allegation (B) Abuse of Authority: In front of the second in the Bronx, Police
Officer Jonathan Polanco stopped §87(2)(b)
§ 87(2) (9)
At approximately 2:21 p.m., ser(2)(b) called 911 to report that three black men had
attempted to rob him near the intersection of (b) 887(2)(b) and that
one of the men was armed with a gun. The suspects fled southbound on [887(2)(b)] Within three minutes, a sergeant met [887(2)(b)] and began relaying over the air the descriptions
of the perpetrators provided to him by \$87(2)(b) The three suspects were respectively described
The direct suspense were respectively described

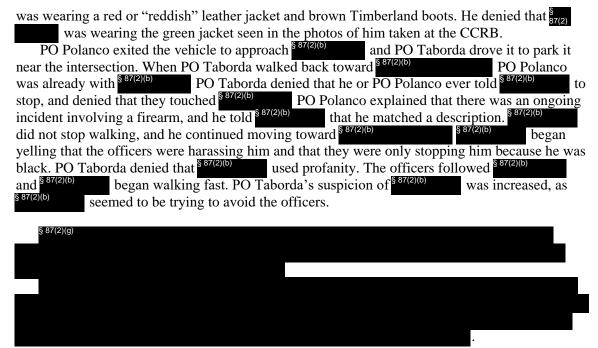
black man wearing a black jacket with a blue scarf on his face, a black man wearing a red hoodie with a black scarf on his face, and a black man wearing a blue hoodie and a black jacket. In the minutes after the job was first announced over the air, there was a good deal of crosstalk, and various iterations of the suspect descriptions were repeated multiple times by officers and the dispatcher. No information was provided over the air as to which suspect had the gun. The direction of flight was confirmed as southbound on §87(2)(b) directed to canvass additional locations, including nearby avenues and subway stations. A few minutes later, an officer stated over the air that the suspects were in their "late teens." At approximately 2:27 p.m., within six minutes of the job first being announced over the air, PO Polanco radioed to say that he was canvassing on §87(2)(b) which is two blocks Three minutes later, at approximately 2:30 p.m., a female officer yelled urgently over the air that two men were fleeing on \$87(2)(6)

A great deal of crosstalk and confusion ensued, during which the location was described as being near the intersection of § 87(2)(b) After four more minutes, or at approximately 2:34 p.m., a sergeant announced that two men had been apprehended, whom he described merely as "black hoodie, black jacket." The sergeant asked for \$87(2)(b) to be brought to the location. Almost immediately after the sergeant announced that two suspects had been apprehended, or at approximately 2:35 p.m., PO Polanco obtained confirmation over the air that the third suspect, who had not yet been apprehended, was the one wearing the red hoodie. PO Polanco then asked over the air for \$87(2)(b) to be brought to \$87(2)(b) and another officer then said that the suspect wearing the red hoodie was the one who had the gun. PO Polanco then asked twice more for officers to bring \$87(2)(b) to \$87(2)(b) About one minute later, a female officer stated over the air that the suspect wearing a red hoodie was also wearing "red Timberlands." At approximately 2:37 p.m., the sergeant who had \$37(2)(b) in his vehicle asked for PO Polanco's location, and PO Polanco provided it. A male voice could then be heard saying, "Negative. Negative." The same sergeant then said that he was going to continue canvassing for the remaining suspect while he had § 37(2) in his vehicle. It was not until this point that the sergeant put over the air that the remaining suspect was about 5'10" tall, was "heavyset," weighed about 200 pounds, and was dark-skinned. No further transmissions regarding PO Polanco's activity at §87(2)(b) came over the air after that point. At approximately 2:57 p.m., the sergeant who had been driving \$87(2)(b) announced that he recovered the gun in the same location at which the two suspects had been apprehended. This was the first moment that anyone announced over the air that a gun had been recovered. The dispatcher recording shows that the first interaction between PO Polanco and \$87(2)(b) must have taken place between approximately 2:27 p.m. and approximately 2:35 p.ms 37(2)0

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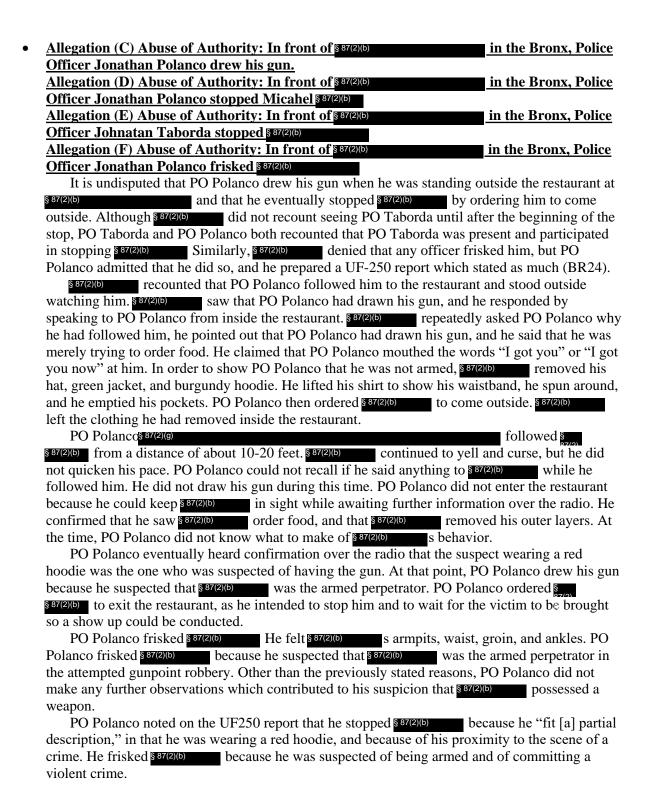
The courts have addressed the pertinent issue in this incident through their analyses of street stops which are based upon anonymous tips. In those cases, the courts have consistently ruled that an anonymous report at most provides officers with grounds to conduct a common-law inquiry, even if an individual matches a description. This stands in opposition to a report from a known party, which does give officers reasonable suspicion to stop an individual. *People v. Moore*, 6 N.Y.3d 496 (2006) (BR16), citing *Florida v. J.L.*, 529 U.S. 266 (2000) (BR17). The courts have reasoned that a report from a known party is more reliable because officers can assess the party's credibility and basis of knowledge. In addition, officers can follow up with a known party and hold him or her responsible if his or her allegations prove to be fabricated.

The courts have also evaluated the legitimacy of such stops by examining the specificity of the description of the suspect, the resemblance of the stopped individual to the description, and the stopped individual's spatial and temporal proximity to the location and time of the alleged crime. The courts tend to evaluate these factors in view of the totality of the circumstances in each case. In general, vague and generic pedigree descriptions are looked upon unfavorably with regard to the basis they provide for officers to stop a suspect (See: *People v. Ransom*, 46 Misc. 3d 1224(A) (Crim. Ct., Bronx Co. 2015) (BR18); *People v. Dubinsky*, 289 A.D.2d 415 (2nd Dept. 2001) (BR19)). The resemblance of the stopped individual to the description is an important factor, but some amount of discrepancy between the two is allowable. Stops which are conducted almost immediately after the incident are viewed favorably. Similarly, stops which take place in close proximity to the incident location are viewed favorably, as are those which take place at a location to which it would have been reasonable for the suspect to have fled in the time since the incident. (See: *People v. Abdul-Mateen*, 126 A.D.3d 986 (2nd Dept. 2015) (BR20); *People v. Ortiz*, 284 A.D.2d 187 (1st Dept. 2001) (BR21); *People v. Washington*, 182 A.D.2d 520 (1st Dept. 1992) (BR22)).

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§ 87(2)(g)
§ 87(2)(g)
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<u>Patrol Guide Procedure 221-01</u> notes that an officer's decision to display or draw a firearm should be based on an articulable belief that the potential for serious physical injury is present.
Once the potential for serious injury is no longer present, the officer should holster the firearm as
soon as practicable (BR23). § 87(2)(9)
§ 87(2)(g)
§ 87(2)(g)

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As previously noted, PO Taborda recounted that he was present with PO Polanco in front of the restaurant, and that he participated in stopping [887(2)(b)] PO Taborda denied that PO Polanco drew his gun during this portion of the incident.
§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)
According to <u>Patrol Guide Procedure 212-11</u> , a frisk is authorized when an officer reasonably suspects that an individual is armed and dangerous. This includes situations in which the officer reasonably suspects that the person has committed a violent crime, and situations in which a victim or witness indicates that a suspect may be carrying a weapon. A frisk may only be conducted to determine if an individual has a weapon on his or her person (BR25).
§ 87(2)(g)
Allegation (G) Discourtesy: In front of \$87(2)(b) in the Bronx, Police Officer Jonathan Polanco spoke discourteously to \$87(2)(b) Allegation (H) Discourtesy: In front of \$87(2)(b) in the Bronx, an officer
spoke discourteously to \$87(2)(b) 887(2)(b) did not recount in his handwritten complaint or in his DiRAD message that officers used profanity. In his phone statement, he recounted that he waited for some time with officers in front of the restaurant, until he heard the description come over the radio of a suspect wearing a red hoodie and red Timberland boots. He then protested, "I don't even fit the description!" In his initial account, \$87(2)(b) said that he then heard officers make "rude"

knew only that	t he could not recall what they were actually saying. He later reiterated that he
saving He again	he officers were laughing, and that he could not recall exactly what they were
saying. He agai	described the officers as "joking amongst each other," and he specifically denied
that the officers	were speaking to him. However, upon finally being reminded that he had alleged
in his phone sta	ement that officers used the words "dumbass" and "fuck," \$87(2)(b) then
alleged that PO	Polanco called him a "dumbass." He also alleged that a male officer standing
behind PO Pola	nco said to him, "You can't fuck with us." \$87(2)(6) now insisted that the
officers were sp	eaking to him at the time, and that they were trying to provoke a reaction from
him.	
§ 87(2)(b)	could provide no description for the officer who allegedly used the word "fuck"
with him.	
	and PO Taborda both denied that any officer made either of the alleged
comments, and	both denied that any officer used any profanity with \$87(2)(b) while standing in
front of the resta	urant.
§ 87(2)(g)	
§ 87(2)(g)	
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	buse of Authority: In front of in the Bronx, Police Office
Jonathan Pola	co drew his gun.
Jonathan Polar It is undispu	ted that, after the "show up," PO Polanco and PO Taborda returned to the
Jonathan Polar It is undispu vicinity of \$87(2)(0	ted that, after the "show up," PO Polanco and PO Taborda returned to the to search for a gun. PO Polanco and PO Taborda both still thought
It is undisputicinity of \$87(2)(b)	ted that, after the "show up," PO Polanco and PO Taborda returned to the to search for a gun. PO Polanco and PO Taborda both still thought was involved in the crime, despite the fact that the victim did not positively
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It is undisputiciently of \$87(2)(b) identify \$87(2)(b) identify \$87(2)(b) identify \$87(2)(b) having left his odditched a gun in location was new \$87(2)(b) to the officers thim. PO Polance that there was nofficers, at which \$87(2)(b) "D inside, retrieved had holstered him Both officers."	ted that, after the "show up," PO Polanco and PO Taborda returned to the to search for a gun. PO Polanco and PO Taborda both still thought was involved in the crime, despite the fact that the victim did not positively PO Polanco noted that the victim may have been thrown off by PO Polanco noted that the victim may have been thrown off by the uter clothing inside the restaurant. The officers wanted to see if PO Polanco noted that the vicinity of the building near which they had first seen him, especially as the recounted that he took his food home and encountered the officers. He protested at they were acting "ridiculous" as they had no reason for continuing to suspect that the officers were looking for a gun. PO Polanco told point PO Polanco drew his gun and held it down by his side. PO Polanco told point PO Polanco drew his gun and held it down by his side. PO Polanco told point toome over here. We're looking for a gun. PO Polanco told point PO Polanco drew his gun and held it down by his side. PO Polanco told point toome over here. We're looking for a gun. PO Polanco told point PO Polanco drew his gun and held it down by his side. PO Polanco told point to me over here. We're looking for a gun. Get out of here." PO Polanco told point PO Polanco drew his gun and held it down by his point, PO Polanco told point PO Polanco drew his gun and held it down by his point, PO Polanco told point PO Polanco drew his gun and held it down by his point, PO Polanco told point PO Polanco drew his gun and held it down by his point, PO Polanco told point PO Polanco drew his gun and held it down by his point, PO Polanco told point PO Polanco drew his gun and held it down by his point, PO Polanco told point PO Polanco drew his gun and held it down by his point, PO Polanco told point PO Polanco drew his gun and held it down by his point PO Polanco drew his gun and held it down by his point PO Polanco drew his gun and held it down by his point PO Polanco drew his gun and held it down by his point PO Polanco drew his gun and held it

should be based on an articulable be	notes that an officer's decision to display or elief that the potential for serious physical in is no longer present, the officer should hold	jury is present.
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This is the first CCRB complaint to PO Jonathan Polanco has been a me five cases and 13 allegations, none of PO Johnatan Taborda has been a me complaint in which he has been a su	ember of the NYPD for one year. This is the bject.	een a subject in
As of June 12, 2018, the NYC Office	e of the Comptroller has no record of a Noti	ice of Claim being
filed regarding this complaint (BR2' [§ 87(2)(6)] [§§ 86(1)(3)&(4)] [§ 87(2)(6)]	7).	
Squad No.: <u>8</u>		
Investigator:	Inv. Daniel Giansante	Doto
Signature	Print Title & Name	Date
Squad Leader:Signature	Print Title & Name	Data
Signature	rimi line & name	Date
Reviewer:Signature	Print Title & Name	Date